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Intellectual Property Rights and New Media Art

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Intellectual Property Rights and New Media Art

Abstract

This paper addresses issues concerning new media art and intellectual property rights, especially in terms of nomenclature. What is new media art? The author examines new media and copyright law to discuss how intellectual property is determined to be copyrightable in terms of new technologies. What is the role of copyright in creativity? How can this role change when considering technologies and practices that eschew or circumvent copyright? Open source software and copyleft will be also addressed in this paper. Does originality change in the Age of Technology and what factors have influenced our concept of originality? The author will come to some conclusions about new media art, in the context of intellectual property rights and copyright.

Keywords

new media, new media arts, media art, intellectual property rights, copyright, computer art, digital art, new technologies, Marcel Duchamp, copyleft, Creative Commons, originality

Author Bio & Acknowledgements

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Introduction

This paper will address a number of issues concerning new media art and intellectual property rights, especially in terms of nomenclature for accessibility to this new art, and this art's eligibility for copyright. We will first look at what new media art is and is not, and what it might be in the future. We will then examine copyright law and how intellectual property is determined to be copyrightable. What factors make a work of art eligible for the protection of copyright? Does copyright encourage or discourage the creation of new works? The concepts of open source software and copyleft will be also addressed in this paper. Is copyright still important in the realm of media art at? Does the Age of Information make copyright obsolete? Finally, we will come to some conclusions about new media art, and how and why intellectual property rights impact it. This paper will not attempt to establish a clear definition of new media art but will discuss the evolution of art media in contemporary society, and address problems of nomenclature in the realm of new (contemporaneous) art—problems that are reflected in research and discourse, and in the laws of copyright.

What is New Media Art?

In terms of taxonomy (the attempt to make sense of the multiplicity of things in the world by providing means of discovery and research), a plethora of terms may be considered to cover new media art. According to the Getty Research Institute's Art and Architecture Thesaurus (AAT), new media art is "art that uses new means of mass communication, specifically electronic and digital technology, inclusive of video and other forms of motion and sound media."¹ Computer art and digital art are included in the hierarchy of new media art as narrower terms. Despite the term being inclusive of motion and sound, the AAT also uses the term "time-based works" as a "general term for visual works that depend on technology, and have duration as a dimension. Refers to works of art that are dependent on technology and have a durational dimension."² Time-based works include actions, happenings, living sculpture, performance art, sound art, and video art.

The Library of Congress Subject Headings (LCSH) also uses the term new media art, defining this as "works of art that incorporate electronic and digital technology, including video and other forms of motion and sound media."³ LCSH does not use the term time-based works, and computer art is a narrower term within new media art. Narrower terms within computer art include computer graphics, electronic mail art, glitch art, stereograms, and painting—digital techniques.

Other basic research resources, such as the *Concise Dictionary of Oxford Art Terms*, explain new media art as "a mixed field of technology-based art that has overcome platform and collectability problems to emerge as a rapidly growing genre in

¹"New media art," AAT, Getty Research Institute, accessed December 21, 2017, <http://www.getty.edu/vow/AATFullDisplay?find=new+media+art&logic=AND¬e=&subjectid=300386814>.

²"Time-based works," AAT, Getty Research Institute, accessed December 21, 2017, http://www.getty.edu/vow/AATFullDisplay?find=time+based&logic=AND¬e=&english=N&prev_page=1&subjectid=300185191.

³"New media art," Library of Congress Subject Headings, accessed December 21, 2017, <https://lccn.loc.gov/sh2009005030>.

a variety of markets. The term ‘new media art’ has been in use since the 1960s when it was applied to any non-traditional medium.”⁴

As Christiane Paul, Associate Professor in the School of Media Studies at The New School, and Adjunct Curator of New Media Arts at the Whitney Museum of American Art in New York City, writes, “the development of possible taxonomies for the art form has been a much-discussed topic and an elusive goal.”⁵ Most of the authors represented in my bibliography use a bewildering number of terms when writing about new media art: “software-based,”⁶ “born-digital,”⁷ “multimedia interactive art,”⁸ “digital folklore,”⁹ and “video installation art,”¹⁰ among others. When applying copyright law to this genre, the terminology used for this new art can be a crucial factor.

Some more recent writings on art of the twenty-first century often prefer the term media art to new media art, recognizing rightly that new is a relative and changing term. For example, Valentino Catricala, Researcher at the Fondazione Mondo Digitale and Post-Doc Research Fellow at Università degli Studi Roma Tre, feels that, “media art, deprived of the word ‘new,’ allows [the term] to overcome [sic] the technological nature of the single medium.”¹¹ This, of course, could be said to be true of every medium, in which case, the proper word to retain would be simply art, whether the medium is oil on canvas, or lithograph, or limewood, or a computer program. The critic Domenico Quaranta considers the term post internet art in her essay “Situating Post Internet,” which she concludes “might be a good subject for art criticism, but it is not a useful label in art history, lacking historical depth....”¹²

This abundance of nomenclature –“this terminological whirl”¹³—exposes the complex nature of new media art, in terms of research and pedagogy, as well as in the context of copyright law.

Copyright law

U.S. copyright law protects “pictorial, graphic, and sculptural works... [which] include two-dimensional and three-dimensional works of fine, graphic, and applied art,

⁴Susan Elizabeth Ryan, “Market for new media art,” in *Grove Art Online*, 2018. <http://www.oxfordartonline.com/groveart/view/10.1093/gao/9781884446054.001.0001/oa0-9781884446054-e-2000000138>, para. 1.

⁵Christiane Paul, “The Myth of Immateriality: Presenting and Preserving New Media” in *MediaArtHistories*, ed. Oliver Grau (Cambridge, MA: The MIT Press, 2016), 252-253.

⁶Lisa Dorin, *Film, Video, and New Media at the Art Institute of Chicago, with the Howard and Donna Stone Gift* (New Haven, CT: Yale University Press, 2009), 9.

⁷Richard Rinehart, *Nailing Down Bits: Digital Art and Intellectual Property* ([Gatineau, Québec]: Canadian Heritage Information Network, 2006), <http://publications.gc.ca/site/archive-archived.html?url=http://publications.gc.ca/collections/Collection/CH56-4-4-.2006E.pdf>, 7.

⁸Richard Rinehart and Jon Ippolito, *Re-Collection: Art, New Media, and Social Memory*, Leonardo Book Series (Cambridge, MA: MIT Press, 2014), 21.

⁹Olivia Lialina and Dragan Espenschied, “Do You Believe in Users?/Turing Complete User,” in *Mass Effect: Art and the Internet in the Twenty-first Century*, ed. Lauren Cornell and Ed Halter (Cambridge, MA: The MIT Press, 2015), 1.

¹⁰Michael Rush, *New Media in Art* (London: Thames & Hudson, 2011), 7.

¹¹Valentino Catricalà, “On the Notion of Media Art. Theories, Patterns, Terminologies, in *Media art: towards a new definition of arts in the age of technology*, ed. Valentino Catricala (Pistoia: Gli ori, 2015), 70.

¹²Domenico Quaranta, “Situating Post Internet, in *Media art: towards a new definition of arts in the age of technology*, ed. Valentino Catricala (Pistoia: Gli ori, 2015), 122.

¹³Catricalà, “On the Notion of Media Art,” 68.

photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans.”¹⁴

According to the CDPA (Copyright, Designs and Patents Act 1988) in the United Kingdom, copyright protects “‘original’ artistic works: graphic work (which includes a) any painting, drawing, diagram, map, chart or plan, and b) any engraving, etching, lithograph, woodcut or similar work), photograph, sculpture or collage, in each case irrespective of artistic quality; work of artistic craftsmanship; work of architecture (i.e., a building or model of a building). . . .”¹⁵

As is apparent from both descriptions, media art is essentially excluded from the taxonomy of artworks eligible for copyright.¹⁶

In her article for the *Cornell Law Review*, associate in the law firm of Jenner & Block, Anna Mitran, agrees: “. . . new media art has been excluded from the definition of ‘visual art.’”¹⁷ British solicitor and law professor Simon Stokes addresses this exclusion in his informative and very readable book, *Art and Copyright*. He points out that the “confining definition of ‘artistic works’ . . . means the courts are increasingly having to determine whether works outside the boundaries of traditional art forms are protected by copyright.”¹⁸ His book deals with U.K. and U.S. copyright, since the two have much in common, and also suggests that the concepts of “originality” and “permanence (fixation)” –both key elements of art in copyright law—are challenged by new media art.

In an increasingly global world, international intellectual property rights seem more appropriate and practical than individual countries maintaining their own copyright laws.¹⁹ The Berne Convention for the Protection of Literary and Artistic Works of 1886 and the World Intellectual Property Organisation (WIPO) Copyright Treaty of 1996 are two international attempts to regularize copyright protection across borders, but neither has proved robust and enforcement is difficult.²⁰ Current events make the hope for a more cooperative international system for protecting intellectual property even more remote.

Some particularly divisive aspects of copyright law in different countries include China’s late adoption of copyright code (1990); that fact that ready-mades and found objects like Marcel Duchamp’s *Bicycle Wheel* are not protected under German copyright law;²¹ and that the United Kingdom’s “fair dealing” clause contrasts the United States’ (and China’s and Italy’s) “fair use.” Several European countries

¹⁴“Definitions,” Chapter 1: Subject Matter and Scope of Copyright, accessed December 21, 2017, <https://www.copyright.gov/title17/92chap1.html#102>.

¹⁵Simon Stokes, *Art and Copyright (second edition)* (Oxford: Hart Pub, 2012), 34.

¹⁶This is true of the Berne Convention (Berne Convention for the Protection of Literary and Artistic Works) as well, where art eligible for protection is “works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.” http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P85_10661.

¹⁷Anna J. Mitran, “Royalties Too? Exploring Resale Royalties for New Media Art,” *Cornell Law Review* 101, no. 5 (2016): 1354.

¹⁸Simon Stokes, *Art and Copyright* (Oxford: Hart Pub., 2001), 173.

¹⁹Rowland, Brett, Mervyn Flatt and Samantha McGonigle, “Breaking Down the Borders: International Copyright Conventions and Jurisdiction” in *Dear Images: Art, Copyright and Culture*, edited by Daniel McClean and Karsten Schubert (London: Ridinghouse, 2002), 85.

²⁰*Ibid.*, 96.

²¹Stokes, *Art and Copyright*, 2012, 33.

recognize *droite de suite*—the right of the artist to receive royalties from the resale of their work; the United States does not (but California does).²² Plagiarism (“passing off” another’s work as your own, in Simon Stokes’ words²³) is illegal in the United Kingdom but not in the United States. Parody is considered “fair use” under U.S. copyright law, but the U.K. does not consider parody “fair dealing.”

Christiane Paul comments in her book *Digital Art* that appropriation, remixing, and cloning of material in media art bring up “issues of intellectual property and copyright which have become a pressing issue in the digital age. Traditional copyright laws to a large extent are not applicable in the digital realm and have to be reexamined on a global scale.”²⁴ She mentions that many digital artists are supporters of the open source and copyleft movements, often taking on an activist role in their artwork.²⁵

Activism and new media: The open source, Creative Commons, and copyleft “movements”

Some twenty-first century writers consider activism a salient component of media art. In terms of a new type of accessibility to technology—the ubiquity of the internet and the possibility of endless replication of art and information—an activist stance might seem obvious. The digital divide, which refers to the availability of the internet and information to privileged users, while underserved populations struggle for the same access, is often addressed in terms of social reform and activism.²⁶ However, new media artists do not confine their work to social activism (nor does any art medium from the past). The activist component of new art is often linked to the activism found in the realm of technology itself.

David Berry, lecturer in Media and Communication at Swansea University, explains in his book *Copy, Rip, Burn*, “Generally it is argued that the free software and open source software movement began in the ‘hacker’ culture of US computer science laboratories at Stanford, Berkeley, Carnegie Mellon and MIT in the 1960s and 1970s.”²⁷ During this time and into the 1980s, technology grew by the tinkering and “hacking” of users (Implementers), who had a much better understanding of computers and how they work than even today’s digital generation users (lusers).²⁸ This is analogous to the inventors and early practitioners of photography, where the creators of this new media and its early adapters, understood and contributed to the evolution of the medium. “By the end of the 1990s, however, the rise of web design, the web designer as a new profession, the ‘new economy,’ and the whole industry around this economy, all conspired to point lowly users back to their place.”²⁹ Technology skeptic

²²Mitran, “Royalties Too?,” 1357.

²³Stokes, *Art and Copyright*, 2001, 177.

²⁴Christiane Paul, *Digital Art* (London: Thames and Hudson Ltd., 2011), 210-211.

²⁵Ibid, 211.

²⁶Craig S. Landers, *Internet Theory, Technology and Applications Series: The Digital Divide: Issues, Recommendations and Research*, (Hauppauge, NY: Nova Science Publishers, Inc., 2017), vii.

²⁷David M. Berry, *Copy, Rip, Burn: the Politics of Copyleft and Open Source* (London: Pluto, 2008), 105.

²⁸Lialina and Espenschied, “Do You Believe in Users?,” 3.

²⁹Ibid, 3-4.

and writer Evgeny Morozov called these lowly and naive users of the 1990s “cyberflaneurs.”³⁰

When software was first protected by U.S. copyright in 1980, a conflict arose “between the social activities of programmers who shared knowledge and methods amongst colleagues, and the requirements of corporations using law to fix copyrighted works to exploit their use.”³¹ In 1983, Richard Stallman, “an eccentric American software developer,”³² founded GNU (GNU’s not Unix), which crowd-sourced programmers to build a completely new and free operating system.³³ (Stallman worked at MIT but resigned in disgust when the institution required password-protected computer accounts and other proprietary actions.)³⁴

From GNU arose the Free Software Foundation and the concept of copyleft, the antithesis of copyright. The Free Software Foundation’s mission is “to preserve, protect and promote the freedom to use, study, copy, modify, and redistribute computer software, and to defend the rights of Free Software users.”³⁵ In 1991, Linus Torvalds used this GNU system and “licensing” to develop the open source operating system, Linux.³⁶ “The GNU General Public License (GPL) gives the user the rights to have copies of the human-readable source code along with the functional binaries and ensures that all future derivatives of the work must also be released under the [same] terms of the license.”³⁷

In 2001, the non-profit organization Creative Commons was founded. Inspired in part by the GNU General Public License, Creative Commons developed a set of copyright licenses that could be applied by creators to their works, including art and photography.³⁸ These licenses allow the reuse of works by others without relinquishing the work into the public domain. Most Creative Commons licenses allow the reuse, distribution, and display of works for non-commercial purposes. Some demand attribution of the work and one prevents using the work in a derivative manner. Wikimedia Commons and Flickr Commons are among the most well-known image-based sites that rely on Creative Commons licensing.

Originality?

In 2005, Carrie McLaren curated an exhibition at SF MOMA’s Artists Gallery called *Illegal Art* that specifically tackled art that pushed the boundaries of copyright and fair use. She commented, “Copyright law reflects a skewed perception that any artist, any creator, can be wholly original, when in fact every act of creation builds upon earlier acts across the chain of humanity.”³⁹

³⁰Jesse Darling, “Arcades, Mall Rats, and Tumblr Thugs” in *Mass Effect: Art and the Internet in the Twenty-first Century*, ed. Lauren Cornell and Ed Halter (Cambridge, MA: The MIT Press, 2015), 325-328.

³¹Berry, *Copy, Rip, Burn*, 107.

³²Ibid, 110.

³³Ibid, 111.

³⁴Ibid.

³⁵“What is Copyleft?” Free Software Foundation, <https://www.gnu.org/copyleft/> (accessed December 19, 2017).

³⁶Berry, *Copy, Rip, Burn*, 118.

³⁷Ibid, 115.

³⁸“History,” Creative Commons, accessed December 22, 2017, <https://creativecommons.org/about/history/>.

³⁹Rinehart, *Nailing Down Bits*, 21.

Simon Stokes specifically mentions Marcel Duchamp's *Bicycle Wheel* (replicas of 1913 in MoMA and the Philadelphia Museum of Art⁴⁰) in *Art and Copyright* (2001). Is this work original? "Here the originality consists in taking the found object out of its usual setting and exhibiting it in an artistic context."⁴¹ And as for "permanence" as a condition for copyright protection, how "fixed" are new media artworks? There has to be some corporeal *thing* to copyright. Media art is often interactive, situational, and live—not permanent. Artists working with new technologies are also often collaborative and increasingly global "making it difficult to ascertain who the artist is, ...who owns the intellectual property,"⁴² and under what national jurisdiction.

Many of the authors in my bibliography credit Marcel Duchamp as the progenitor of new media art. In the case of Duchamp, I would agree that his conceptual activism contributed to the development of media art. Duchamp can be considered to be the antecedent of sound and cinematographic experimentation in art, of game theory (in his self-proclaimed abandonment of art for the world of chess), of the exploration of gender issues in art (in his 1920 creation of Rrose Selavy as his female alter ego⁴³), his exploitation of replication and ready-mades, and his aversion to⁴⁴ the commercial art market and traditional art museums.⁴⁵

Professor of Art History and Media Theory at the Leipzig Academy of Visual Design, Dieter Daniels, in his essay "Duchamp: Interface: Turing: A Hypothetical Encounter between the Bachelor Machine and the Universal Machine" claims all new media art comes from Duchamp's *Large Glass* (1915-23, Philadelphia Museum of Art),⁴⁶ describing the *Large Glass* as the "universal machine, as the beginning of artificial intelligence...."⁴⁷ In addition, Duchamp's collaboration with John Cage and Teeny Duchamp in Toronto in 1968, where each move in a chess game created a new sound, is a "pioneering, interactive media artwork."⁴⁸ Christiane Paul, in her 2011 book *Digital Art*, considers the roots of new media art are in Duchamp, Dada, and Fluxus (which in turn owes a debt to Duchamp).⁴⁹

Michael Rush, in his 2011 book *New Media in Art* also credits Duchamp as one of the artists influential to new media art,⁵⁰ and comments that Duchamp's disdain for the "business of art" also impacted later artists.⁵¹ The authors of the book *New Media*

⁴⁰<http://www.philamuseum.org/collections/permanent/59928.html?mulR=1097424316>.

⁴¹Stokes, *Art and Copyright*, 2001, 124.

⁴²Langdon, Melissa, *The Work of Art in a Digital Age: art, technology and globalisation*. (New York, NY: Springer, 2016), 29.

⁴³Gagosian Gallery, *Marcel Duchamp / texts by Calvin Tomkins and Adina Kamien-Kazhdan* (New York, NY: Gagosian Gallery, 2014), 54.

⁴⁴Rush, *New Media in Art*, 48.

⁴⁵In 1912, the year Duchamp started his extensive notes for the *Large Glass*, the artist began "to train as a librarian, in order not to have to earn his living as a painter in the future." Royal Academy of Arts & Salvador Dali Museum, *Dali/Duchamp: exhibition and catalogue concept, Dawn Ades, William Jeffett, and Sarah Lea* (London, Royal Academy of Arts, 2017), 194.

⁴⁶<http://www.philamuseum.org/collections/permanent/54149.html?mulR=660304017>.

⁴⁷Dieter Daniels, "Duchamp: Interface: Turing: A Hypothetical Encounter between the Bachelor Machine and the Universal Machine" in *MediaArtHistories*, ed. Oliver Grau (Cambridge, MA: The MIT Press, 2016), 107. Here Daniels is referring to the imaginary machines mentioned in the works of Jules Verne, Edgar Allan Poe, Raymond Roussel, Franz Kafka, and others—automatons that prefigure the development of computers (p. 111). Duchamp himself referred to the lower half of the *Large Glass* as a "bachelor machine" (p. 109).

⁴⁸Ibid, 108.

⁴⁹Paul, *Digital Art*, 24.

⁵⁰Rush, *New Media in Art*, 7.

⁵¹Ibid, 22.

Art, Mark Tribe, Reena Jana, and Uta Grosenick, also feel that “Marcel Duchamp’s ready-mades prefigured countless New Media art works involving blank appropriation...”⁵² Duchamp also had a hand in the interpretation and application of copyright law, of course, in the eyes of British art historian and art critic Richard Shone who, in his chapter “Copies and Translations” in the book *Dear Images: art, copyright and culture*, includes this paragraph as his first footnote:

Copying and copyright have become such contentious issues because a gulf has sprung up between post-Duchampian, postmodern artistic practice and a still fundamentally Modernist-Romantic interpretation of copyright. The postmodern notion that an image can be transferred from one context to another, without any noticeable transformation taking place, sits uncomfortably with the expression-idea dichotomy entrenched in current (modernist) legal models of authorship and originality. In the pre-Duchampian past, the use of an existing image went hand in hand with a corresponding transformation. This transformation, it could be said, was the external marker of the conceptual shift that underlay it. The two, until Duchamp, always went in tandem. Duchamp’s radical work of 1914-21 forever separated them, and by 1980, his gesture had become common cultural currency.⁵³

Some new media artists and theorists argue that there is no longer *any* originality in art. Carolyn Guertin, professor of Digital Media at the University of Texas, Arlington, asserts that in the digital age “creation becomes irrelevant” because we have “all recorded information in the history of the world at our fingertips.”⁵⁴ Everything now is just transformative and derivative, and implicitly “out of copyright.”⁵⁵ She also declares that new media artists are deliberately fighting the “copyright cops” by relying on “liveness”—even the sampling of music cannot be controlled in the live venue.⁵⁶ We cannot yet copyright living.⁵⁷

A number of authors in my bibliography wonder if media art is even art at all. Independent curator Steve Dietz in his essay “Collecting New-Media Art: Just like anything else, only different” points out that there is a debate in the institutional art world about whether new media should be considered a distinct field from “art.”⁵⁸ Anna Mitran also suggests that new media art may be fundamentally different in the eyes of copyright law than more traditional art forms.⁵⁹

Evolution of Copyright

⁵²Mark Tribe, Reena Jana, and Uta Grosenick, *New media art* (Hong Kong: Taschen, 2009), 8.

⁵³Richard Shone, “Copies and Translations” in *Dear Images: Art, Copyright and Culture*, ed. Daniel McClean and Karsten Schubert (London: Ridinghouse, 2002), 372.

⁵⁴Carolyn Guertin, *Digital Prohibition: Piracy and Authorship in New Media Art* (London: Continuum, 2012), 39.

⁵⁵*Ibid.*, 40.

⁵⁶*Ibid.*, 84.

⁵⁷It is ironic how difficult it is to access and read this e-book.

⁵⁸Steve Dietz, “Collecting New-Media Art: Just Like Anything Else, Only Different,” in *Collecting the New: Museums and Contemporary Art*, ed. Bruce Altshuler (Princeton, NJ: Princeton University Press, 2013), 87.

⁵⁹Mitran, “Royalties Too?,” 1365.

In fact, there is precedent for the evolution of copyright law, which was initially established as the literal right to copy. In 1735, the British passed the “Act for the Encouragement for the Arts of Designing, Engraving, and Etching” (a.k.a. Hogarth’s Act) to prevent pirating of artists’ works.⁶⁰ At the time, the invention of printmaking enabled the replication and distribution of artworks without requiring any share of the profit to the original creator, a practice that frustrated the prolific artist William Hogarth. Over the first half of the nineteenth century, the rhetoric about creativity, artistic works, and property rights evolved, with arguments for considering the rights of artists to be equal to those of authors.⁶¹ In the U.K., the 1869 *Graves’ Case* was instrumental in determining that photographs taken with that new technology could be protected by copyright.⁶² The same evolution is observed with the introduction of software copyright in 1980 in the U.S. (1992 in the U.K.).⁶³

There are arguments for abolishing copyright altogether. Hito Steyerl, professor of New Media Art at the Berlin University of the Arts, argues in her essay “Too much World: Is the Internet Dead?” that “if images can be shared and circulated, why can’t everything else be too?... If copyright can be dodged and called into question, why can’t private property?”⁶⁴ Those who demand robust intellectual property protection assume that there would be no incentive for creativity and production of new works if royalties were not demanded.⁶⁵ They assert that “the purpose of copyright... is to ensure that unauthorized copying does not economically disincentivize artists from creating new works.”⁶⁶ However, the popularity of open source and copyleft production suggests that creativity (artistic or otherwise) does not always depend on compensation.⁶⁷

The end of copyright?

Solicitor Simon Stokes concluded in his 2001 edition of *Art and Copyright*, “Artists and publishers are frequently under the impression that the internet spells out the end of copyright, unregulated piracy being the inevitable outcome of placing copies of their works on the Internet.”⁶⁸ In the second edition of his book, written in 2012, Stokes surmises that “the current cultural trend towards user-generated content, the sharing of works through social media sites and the questioning of copyright by generations who have now grown up with the Internet seems to the author to challenge many of the assumptions underlying copyright as an economic right and especially the economic incentive justification for copyright.”⁶⁹ He goes on to suggest that copyright

⁶⁰Lionel Bently, “Art and the Making of Modern Copyright Law” in *Dear Images: Art, Copyright and Culture*, ed. Daniel McClean and Karsten Schubert (London: Ridinghouse, 2002), 331.

⁶¹Ibid, 332.

⁶²Stokes, *Art and Copyright*, 2001, 103.

⁶³Berry, *Copy, Rip, Burn*, 107.

⁶⁴Hito Steyerl, “Too much World: Is the Internet Dead?” in *Mass Effect: Art and the Internet in the Twenty-first Century*, ed. Lauren Cornell and Ed Halter (Cambridge, MA: The MIT Press, 2015), 446.

⁶⁵Rochelle Cooper Dreyfuss, “Does IP Need IP? Accommodating Intellectual Production Outside the Intellectual Property Paradigm,” *Cardozo Law Review*. 31, 5 (2010): 1437.

⁶⁶Mitran, “Royalties Too?,” 1365.

⁶⁷Dreyfuss, “Does IP Need IP?,” 1438.

⁶⁸Stokes, *Art and Copyright*, 2001, 177.

⁶⁹Stokes, *Art and Copyright*, 2012, 233.

“needs a radical rewriting in light of user attitudes to copying, downloading, remixing and mashups, and user-generated content.”⁷⁰

Rochelle Cooper Dreyfuss, Pauline Newman Professor of Law at New York University Law School, concludes that a “regime” of copyright protection and open source could be the best strategy for the evolution of copyright. Some intellectual property rights are maintained since “norms are fragile; altruism is limited; leaders fail; technologies change; markets tip in unforeseeable directions.... Nor is open production always desirable. Knowledge workers can be exploited, over production is possible, and alternative ways of retaining control can be much worse than the costs of intellectual property rights.”⁷¹

Conclusion

Questioning the validity of copyright in this age prompts us to reexamine new media art as well. I would suggest that the so-called new media art does not exist as a media or genre; that it is not a process like photography, or a movement like Fluxus or Dada. Because we now live in a digital world, there is no need to qualify art as being new media or digital or computer; those are the tools and techniques of our time. We do not refer to microwave meals as “new media dinners,” even though that is clearly what they are. We do not call electronic books “new media books”—they are books in electronic form. Everything around us in this post-Duchampian paradise is new and that newness will continue to be reflected in new technology as a medium for art, for household objects, for communication, and for the distribution of information.

I would suggest that we are experiencing our own version of the eighteenth- and nineteenth-century Industrial Revolution, during which every aspect of the world and our human experience changed. We are living the New Media Revolution. Art—digital or computer-generated—is just an aspect of this change, reflecting those changes, using the new technologies that develop around us. We have “virtual digital assistants” like Siri; we are under surveillance constantly by digital eyes. We can not live without our smart phones; we will soon have cars that drive us around. Robots (“bachelor machines”⁷²) and computers with artificial intelligence impact the workplace and production. The New Media Revolution surrounds us and everything we do—changing our economies, our job prospects, and our technology dependence.

Just as the concept of copyright and the definition of what technological inventions can be considered copyrightable works of art evolved during the Industrial Revolution, it is only fitting that intellectual property rights will evolve during our own times as well. The nomenclature assisting our discovery of these art forms in research and pedagogy will also evolve. Open source and copyleft accelerate the discussion about what can be considered eligible for copyright (and what types of creativity will reject the notion of originality, accessibility, and copyright), and as usual artists are at the forefront expressing the need for change. As our economies and experiences become more global, the urge to have an international intellectual property rights policy grows stronger. As Christiane Paul and Simon Stokes suggest, the legal descriptions of

⁷⁰Stokes, *Art and Copyright*, 2012, 233.

⁷¹Dreyfuss, “Does IP Need IP?,” 1473.

⁷²Daniels, “Duchamp: Interface: Turing,” 109.

works that can be protected by copyright will have to change in order accommodate art made with new media, if indeed these new art forms can be considered original at all. Perhaps Carolyn Guertin is correct and all new art is out of copyright because there is no way to be original in our current Age of Information.

In any case, it is clear that our understanding of intellectual property rights has to evolve, and the language defining what *can* be protected by copyright has to change. Perhaps indeed a mixture of proprietary rights and open source material will be the answer in our New Media Revolution.

Bibliography

- Bently, Lionel. "Art and the Making of Modern Copyright Law." In *Dear Images: Art, Copyright and Culture*, edited by Daniel McClean and Karsten Schubert, 331-351. London: Ridinghouse, 2002.
- Berry, David M. *Copy, Rip, Burn: the Politics of Copyleft and Open Source*. London: Pluto, 2008.
- Catricalà, Valentino (ed.). *Media art: towards a new definition of arts in the age of technology*. Pistoia: Gli ori, 2015.
- Cornell, Lauren, and Ed Halter (ed.). *Mass Effect: Art and the Internet in the Twenty-first Century*. Cambridge, MA: The MIT Press, 2015.
- Darling, Jesse. "Arcades, Mall Rats, and Tumblr Thugs." In *Mass Effect: Art and the Internet in the Twenty-first Century*, edited by Lauren Cornell and Ed Halter, 325-328. Cambridge, MA: The MIT Press, 2015.
- Dietz, Steve. "Collecting New-Media Art: Just Like Anything Else, Only Different." In *Collecting the New: Museums and Contemporary Art*, edited by Bruce Altshuler. Princeton, NJ: Princeton University Press, 2013.
- Dorin, Lisa. *Film, Video, and New Media at the Art Institute of Chicago, with the Howard and Donna Stone Gift*. New Haven, CT: Yale University Press, 2009.
- Dreyfuss, Rochelle Cooper. "Does IP Need IP? Accommodating Intellectual Production Outside the Intellectual Property Paradigm." *Cardozo Law Review*. 31, 5 (2010): 1437-1474.
- Gagosian Gallery. *Marcel Duchamp / texts by Calvin Tomkins and Adina Kamien-Kazhdan*. New York, NY: Gagosian Gallery, 2014.
- Grau, Oliver (ed.). *Mediaarthistories*. Cambridge: MIT Press, 2010. *ProQuest Ebook Central*.
- Guertin, Carolyn. *Digital Prohibition: Piracy and Authorship in New Media Art*. London: Continuum, 2012. *eBook Collection (EBSCOhost)*.
- Landers, Craig S. *Internet Theory, Technology and Applications Series: The Digital Divide : Issues, Recommendations and Research*. Hauppauge, NY: Nova Science Publishers, Inc., 2017.
- Langdon, Melissa. *The Work of Art in a Digital Age: art, technology and globalisation*. New York, NY: Springer, 2016.

- Lialina, Olia, and Dragan Espenschied. "Do You Believe in Users?/ Turing Complete User." In *Mass Effect: Art and the Internet in the Twenty-first Century*, edited by Lauren Cornell and Ed Halter, 1-14. Cambridge, MA: The MIT Press, 2015.
- McClellan, Daniel, and Karsten Schubert (ed.). *Dear Images: Art, Copyright and Culture*. London: Ridinghouse, 2002.
- Mitran, Anna J. "Royalties Too? Exploring Resale Royalties for New Media Art." *Cornell Law Review* 101, no. 5 (2016): 1349-1372.
- Paul, Christiane. *Digital Art*. London: Thames and Hudson Ltd, 2015.
- Rinehart, Richard, and Ippolito, Jon. *Leonardo Book Series: Re-Collection: Art, New Media, and Social Memory*. Cambridge, MA: MIT Press, 2014.
- Rinehart, Richard. *Nailing Down Bits: Digital Art and Intellectual Property*. [Gatineau, Québec]: Canadian Heritage Information Network, 2006.
<http://publications.gc.ca/site/archives-archived.html?url=http://publications.gc.ca/collections/Collection/CH56-4-4-2006E.pdf>.
- Rowland, Brett, Mervyn Flatt and Samantha McGonigle. "Breaking Down the Borders: International Copyright Conventions and Jurisdiction." In *Dear Images: Art, Copyright and Culture*, edited by Daniel McClellan and Karsten Schubert, 81-106. London: Ridinghouse, 2002.
- Royal Academy of Arts & Salvador Dali Museum. *Dali/Duchamp: exhibition and catalogue concept, Dawn Ades, William Jeffett, and Sarah Lea*. London, Royal Academy of Arts, 2017.
- Rush, Michael. *New Media in Art*. London: Thames & Hudson, 2011.
- Ryan, Susan Elizabeth. "Market for new media art." *Grove Art Online*, 2018.
<http://www.oxfordartonline.com/groveart/view/10.1093/gao/9781884446054.001.0001/oao-9781884446054-e-2000000138>.
- Shone, Richard. "Copies and Translations." In *Dear Images: Art, Copyright and Culture*, edited by Daniel McClellan and Karsten Schubert, 353-373. London: Ridinghouse, 2002.
- Steyerl, Hito. "Too Much World: Is the Internet Dead?" In *Mass Effect: Art and the Internet in the Twenty-first Century*, edited by Lauren Cornell and Ed Halter, 439-449. Cambridge, MA: The MIT Press, 2015.
- Stokes, Simon. *Art and Copyright*. Oxford: Hart Pub, 2001.

Stokes, Simon. *Art and Copyright (second edition)*. Oxford: Hart Pub, 2012.

Tribe, Mark, Reena Jana, and Uta Grosenick. *New Media Art*. Hong Kong: Taschen, 2009.